

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION

HENRY JAMES WIMBERLY, :
:
Petitioner :
:
VS. : NO.: 6:05-CV-31 (HL)
CARLTON POWELL, :
:
Respondent :
:

ORDER

Before the Court is petitioner **HENRY JAMES WIMBERLY'S** notice of appeal¹ and motion for certificate of appealability ("COA") from the Court's July 6, 2006 Order, which found petitioner's habeas corpus petition, along with all other outstanding motions, moot.

The Eleventh Circuit Court of Appeals has mandated that the Court construe petitioner's notice of appeal as an application for a certificate of appealability ("COA") pursuant to 28 U.S.C. § 2253(c). *Edwards v. United States*, 114 F.3d 1083 (11th Cir. 1997). Under section 2253(c), a COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right. For the reasons stated in the July 6, 2006

¹It appears petitioner's notice of appeal is untimely. The Court's Order that found the habeas corpus petition, and all other outstanding motions, moot was entered on July 6, 2006. Pursuant to Fed. R. App. P. 4 (a), petitioner had thirty (30) days from this date to file his notice of appeal. Petitioner's notice of appeal was not filed until November 14, 2006.

Order, the Court finds that petitioner has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Accordingly, the application for a COA is **DENIED**.

Also before the Court is petitioner's motion for leave to proceed *in forma pauperis* on appeal. Said motion is **DENIED AS MOOT**.

SO ORDERED, this 25th day of January, 2007.

s/ **Hugh Lawson**
HUGH LAWSON, JUDGE